

**Barrow Utilities and Electric Cooperative, Incorporated and International Brotherhood of Electrical Workers, Local Union 1547.** Case 19–CA–21574

July 28, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

The issues presented here are whether the judge<sup>1</sup> correctly found that: employee Harry White was not a supervisor within the meaning of Section 2(11) of the Act; the Respondent violated Section 8(a)(1) by interrogating White and by telling employees White was being removed as plant steward because of his union activities; and the Respondent violated Section 8(a)(3) and (1) by removing White from his steward's position and by subsequently suspending and discharging him.

The Board has considered the decision and the record<sup>2</sup> in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>3</sup> and conclusions and to adopt the recommended Order as modified.<sup>4</sup>

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Barrow Utilities and Electric Cooperative, Incorporated, Barrow, Alaska, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(f).

<sup>1</sup> On February 12, 1992, Administrative Law Judge Clifford H. Anderson issued the attached decision. The Respondent filed exceptions, a supporting brief, and a motion to reopen the record.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>2</sup> The Respondent has moved to reopen the record to receive the testimony of Edith Vorderstrasse. We deny the motion. The Respondent has failed to demonstrate any extraordinary circumstances warranting reopening of the record for evidence which could have been presented previously.

<sup>3</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>4</sup> The judge's recommended Order does not include the Board's standard remedial language enjoining the Respondent from engaging in "like or related" unlawful conduct. We shall include the correct language in a modified Order and in a substitute notice.

"(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize  
To form, join, or assist any union  
To bargain collectively through representatives of their own choice  
To act together for other mutual aid or protection  
To choose not to engage in any of these protected concerted activities.

WE WILL NOT interrogate employees regarding their union activities or the union activities of other employees.

WE WILL NOT tell our employees that their steward has been replaced and has lost credibility with management because of his "secretive" union activities.

WE WILL NOT replace our steward because of his union activities or the union activities of other employees.

WE WILL NOT suspend our employees because of their union activities or the union activities of other employees.

WE WILL NOT discharge our employees because of their union activities or the union activities of other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Harry White immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, WE WILL further reinstate him to his former position as steward, and WE WILL make him whole for any loss of earnings and other benefits resulting from our unlawful actions against him, less any net interim earnings, plus interest.

WE WILL notify Harry White that we have removed from our files any reference to his removal as steward,

his suspension, and his discharge, and that these actions will not be used against him in any way.

BARROW UTILITIES AND ELECTRIC CO-  
OPERATIVE, INCORPORATED

*Dale B. Cubbison, Esq.*, for the General Counsel.

*Christian N. Bataille, Esq.*, of Fairbanks, Alaska, for the Respondent.

*William F. Morse, Esq.*, of Anchorage, Alaska, for the Charging Party.

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard this case in trial on October 24 and 25, 1991, in Barrow, Alaska, pursuant to a complaint and notice of hearing issued by the Regional Director for Region 19 of the National Labor Relations Board (the Board) on August 26, 1991, and an amended complaint and notice of hearing issued on October 10, 1991, based on a charge filed on July 1, 1991, and docketed as Case 19-CA-21574 by the International Brotherhood of Electrical Workers, Local Union 1547 (the Charging Party or the Union) against Barrow Utilities and Electric Cooperative, Incorporated (Respondent or the Employer) and amended on October 9, 1991. A posthearing brief was filed by Respondent on November 29, 1991.

The amended complaint as further amended at the hearing alleges that Respondent's agent made statements violative of Section 8(a)(1) of the National Labor Relations Act (the Act) to its employees in May and June 1991. It further alleges that Respondent removed employee Harry White from his position of "plant steward" on or about June 18, 1991, suspended him on June 21, 1991, and discharged him on June 27, 1991. The complaint alleges these actions were undertaken by Respondent because White "supported or assisted the Union and in order to discourage employees from engaging in union activities, reporting unsafe working conditions to OSHA, or engaging in other concerted activities for purposes of collective bargaining or other mutual aid or protection" and therefore violated Section 8(a)(1) and (3) of the Act.

Respondent does not dispute it took the actions against White in the complaint, but averred that the actions were free from improper motive and therefore did not violate the Act. Respondent further challenged the allegations of independent violations of Section 8(a)(1) of the Act both by contesting the occurrence of the events as alleged and further contending the Act was not violated under any view of the facts.

All parties were given full opportunity to participate at the hearing, to introduce relevant evidence, to call, examine and cross-examine witnesses, to argue orally, and to file posthearing briefs.

Upon the entire record including oral argument from the General Counsel, the Charging Party, and Respondent and a posthearing brief from Respondent, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT<sup>1</sup>

I. JURISDICTION

Respondent is a nonprofit Alaska corporation, with an office and place of business in Barrow, Alaska, where it is engaged as a public utility providing the community of Barrow, Alaska, with natural gas service, electrical production and distribution, water production, and distribution and sewage service. Respondent during the 12-month period proceeding the issuance of the complaint, in the course and conduct of its business operations, had gross sales in excess of \$1 million and, during the same period of time, purchased and caused to be transferred and delivered to its facilities within the State of Alaska, goods and materials valued in excess of \$50,000 directly from sources outside Alaska, or from suppliers within the State which in turn obtained such goods and materials directly from sources outside the State.

The parties agree and I find that Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent is a nonprofit member owned utility providing four regulated utility functions to the community of Barrow, Alaska: sewer, water, natural gas, and electricity. Respondent's general manager at all relevant times has been James Caress. Roger Jones has been operations assistant and Sheldon Tieglund has been administrative manager. Edith Vorderstrasse has been president of Respondent's board of directors.

Timothy Wolfe has been the B.U.S. plant/utility plant coordinator. He supervises the superintendents of the B.U.S. plant and the utility plant also referred to as base II plant. At relevant times the superintendent of base II plant was Patrick Cleveland. Cleveland had been a mechanic, then chief mechanic for 6 years prior to assuming the duties of superintendent. He served as base II plant superintendent for several years until November 1991 at which time he became a mechanic at the plant. There is no dispute that at all relevant times these individuals were agents of Respondent.

Base II plant is staffed by plant operators, a chief operations mechanic, and a mechanic. At relevant times the chief mechanic was Harry White and the mechanic, Glen Cogburn.

Since the mid-1980s Respondent's electrical linemen have been represented by the Union and have been covered by a

<sup>1</sup> The original answer of Respondent was inadvertently omitted from the formal papers. By order to show cause dated December 31, 1991, I proposed to receive the answer into evidence unless any party objected by January 10, 1992. No party responded to the order. Accordingly, I have received the answer into evidence as Jt. Exh. 2. As a result of the pleadings and the stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

collective-bargaining agreement. Other employees, including utility plant employees, have not been represented by a labor organization.

The Union represents employees in the electrical trade and other occupations throughout the State of Alaska. The union business representative covering the northern portion of the State including Barrow at relevant times was John Giuchici.

### *B. The Supervisory Duties of Harry White*

Harry White began employment for Respondent in late 1988 as a utility plant mechanic working with utility plant chief mechanic or chief of utility plant maintenance (Chief Mechanic), Ron Storer. Upon Storer's departure in late 1989, White was promoted to chief mechanic and received a wage increase and the use of Respondent's trailer home located near the utility areas. Insofar as the record reflects, other than the chief mechanic, there has never been more than one utility mechanic on Respondent's payroll at any one time.

The job descriptions of both the chief mechanic and the mechanic were entered into evidence. The mechanic job description notes that the mechanic works under "the supervision of the Chief Utility Plant Mechanic or Plant Superintendent." It also indicates that the mechanic:

Supervises helpers when performing major overhauling of equipment. These include laborers, utility operators and/or other utility plant mechanics.

The job description for the chief mechanic or chief of utility plant maintenance indicates he is responsible for the training of the assistant mechanic. Presumably this is a reference to the mechanic for the record does not suggest the position of assistant mechanic existed at any relevant time. The two job descriptions do not otherwise specify any of the indicia of supervisory status set forth in Section 2(11) of the Act.

White testified that as chief mechanic he worked with the mechanic as a journeyman to an apprentice on those tasks where either he or the mechanic has the technical experience and/or skills to take the lead. He also testified that, as set forth in the mechanic job description quoted above, the chief mechanic could commandeer other utility operators to assist them if necessary and if it did not interfere in utility operations.

White testified categorically that he had neither the actual authority to take actions nor the authority to effectively recommend the taking of actions such as the hiring, firing, or other discipline of employees or the authorization of time off or overtime for employees. He testified that he had never taken such actions as chief mechanic. White recalled that he had on two occasions while chief mechanic been appointed acting superintendent in Cleveland's absence but heavily discounted his authority in that role.

White testified that his replacement as mechanic on his appointment as chief mechanic was selected after the following events. Cleveland selected Cogburn's resume and invited him to come to Barrow.<sup>2</sup> On Cogburn's arrival Messrs. Caress, Thornburg, and Cleveland—"the people that had the power to hire," were either out of town or in the process of leav-

ing. White was asked to "see if [Cogburn] suited the job, suited the qualifications." White reported that Cogburn "could fill the job because he was an electrician and an electrician was what we needed at the time to do the things that I could not do." Cogburn was thereafter hired.

Former Superintendent Cleveland and Coordinator Wolfe each attributed far greater authority to the chief mechanic position. They testified that the chief was the immediate supervisor of the mechanic and had the power to commandeer and responsibly direct other utility plant staff when extra staff was necessary to accomplish given tasks.

### *C. The Events*

#### *1. White as steward*

In the spring of 1989, Respondent determined to implement a steward system among its unrepresented staff at its utility and B.U.S. plants. White was appointed steward at the utility plant. The system was announced and described in a May 24, 1989 memorandum to plant employees. The memo stated in part:

Each plant now has a "plant steward" who will be available to handle all needed communication. Any employee may utilize a steward whenever he feels it necessary to present a situation to supervision/management. Issues may be presented anonymously thru the steward, or in person with the steward in attendance, issues will be presented to the direct supervisor involved, with the understanding that if no satisfactory decision is reached, the steward may elect to carry it on up to upper management. If an issue goes before the General Manager, his decision on the matter will be final. Naturally the steward and the employee he is representing will be immune from any retribution relating to the issue.

White testified that his steward duties involved approximately 11 utility plant employees and brought him into regular contact with both Cleveland and Caress in his capacity as a steward.

#### *2. The boiler disassembly and employee fears*

In the summer of 1990 Respondent removed an old power plant boiler and its heat recovery system at base II plant. The insulation associated with the old boiler was also removed and/or disturbed. Several employees were concerned that the insulation might contain asbestos and that insufficient safety precautions were being undertaken. White testified that Cleveland responded to these concerns by suggesting the material did not contain asbestos and that those employees who did not want to do the removal work could be replaced.

Months passed and fears and concerns seemed to have been muted by time. In early spring of 1991, a news item was carried in *Barrow* respecting an asbestos problem in the relatively nearby community of Prudhoe Bay which was being rigorously addressed by the Alaska State OSHA. This report, including the fact that a relatively small amount of asbestos produced substantial action by the State, including the shutting down of the workplace, rekindled safety fears among some of the utility employees respecting their contact with what might have been asbestos in 1990 as well as the

<sup>2</sup>Barrow, the northernmost community in the hemisphere, is accessible on a year round basis only by air. Distances and commercial airfares are not inconsiderable.

potential continuing risk of exposure to possible asbestos remaining on site.

### 3. White's role in the asbestos events

White testified that employees came to him with their asbestos concerns in very early April 1991. He in turn went to Cleveland who, White testified, simply told him that "all you guys are trying to do is make trouble for me and I don't want to hear about [it]." White then prepared a memorandum dealing with the subject and brought a copy to Cleveland to take to Caress. Cleveland read it and, White testified, refused to take it to Caress stating that, if White wanted it delivered, he would have to do it himself. White said that he would do so immediately after lunch.

After lunch Cleveland approached White and suggested, were White to tear up the memo, the two would "go over to the office" and report the problem. The two men met with Tom Wolfe immediately thereafter. Wolfe heard the men out, told them that Caress should have been immediately informed about the problem and excused himself to talk to Caress. Wolfe returned to the men and told them that Caress wanted them to make up a memo "on what happened and what the concern was, and have all the operators sign it."

Cleveland denied that White ever approached him with a memo before they spoke to Wolfe. Rather he recalled that White had prepared a memo after their conversation with Wolfe which was destroyed after Cleveland declined to accept it as written. In Cleveland's recollection he was the author of the memo signed by the employees as quoted *infra*.

A memorandum dated April 18, 1991, directed to Wolfe and Caress and signed by Cleveland, White, and seven others was submitted. The memo noted "The Operators at the Utility Plant have expressed a concern of exposure to Asbestos." The specific material at issue was described and the memo concluded with the following:

The main concerns of the operators are:

- (1) What should be done with the remaining Asbestos Millboard?
- (2) What Health effects has the Dust created by the removal of this material had on the people in the Utility Plant?

White testified that time passed without action sufficient to satisfy some employees. Respondent issued a memorandum dated April 24, 1991, from Wolfe to all concerned employees noting that asbestos sampling had been done and that more would be done by a State of Alaska voluntary compliance officer who would visit the facilities on May 8, 1991, for 2 days. Employees told White that they wanted the Alaska OSHA enforcement division to become involved rather than simply the voluntary compliance office. White told the employees they could contact OSHA directly and, apparently, they did so.

Apparently coincidentally, the State OSHA enforcement inspector had arrived and was inspecting the facility when the voluntary compliance officer arrived for his visit. White testified that Caress introduced the enforcement officer, Paul Frith, to him and instructed White to assist Frith in his inspection. Frith stayed 2 days, spoke to the employees and left after giving White a "packet of affidavits for each employee to fill out." White had the affidavits filled out, signed and

dated and sent them to Frith at his Fairbanks, Alaska office. White set the time of these events as about May 21 or 22, 1991.

White testified to two later telephone conversations with Frith. In the first White recalled that Frith told him he had not yet finished his report. In the second, perhaps in early June, Frith told White he had finished his report and "submitted it to the Anchorage office." Frith told White he had "found willful negligence"<sup>3</sup> on the part of Respondent. Frith did not testify in the proceeding although the other OSHA representative, Donald Study, did.

The OSHA office issued its findings—apparently Frith's report was an internal document never issued to the parties—after the events in issue. No findings of willful negligence were made.

### 4. The petition to remove Cleveland

White testified that in or about the first week of May, with the asbestos situation constituting the triggering event, the employees came to White to obtain the removal of Cleveland as superintendent. White prepared a memorandum, showed it to Cleveland and presented it to Caress. White testified that Caress sought a 90-day probation period for Cleveland after which employees could vote to retain him or not. White brought this back to the employees who agreed and the plan was implemented.

Caress testified that "[a]t some point in time" White came to him as steward with a memorandum reflecting that base II employees were not of a mind to follow the leadership or the management of Cleveland. Caress recalled that he asked for a 90-day period to "try rehabilitation" for Cleveland and that White "on behalf of the employees" granted Caress' request. It was agreed that the employees would, in Caress's words: "In essence, watch and judge and at the end of this 90-day period allow them to have a vote on his perceived change of attitude, conduct, things of this nature."

Thereafter Caress issued a memorandum to Cleveland informing him of his "probation type" status. Cleveland was sent to supervisory classes and counselled by Caress about his supervisory style in the following period.

### 5. White's union activities and consequences

White testified that employees remained generally dissatisfied by all events and raised with White the question of unionization in the period May 12–14, 1991. White gave them what information he had and agreed to get additional information for them. White contacted the Union's steward and requested information about the Union. Four or five days later the steward produced a "packet." White testified:

It was history, rules and regulations of the IBEW, and also in the packet was representation cards for the employees to sign if he would like representation within the Union.

White distributed the information and authorization cards to employees over the following 4-day period. Within 2 days he had obtained signed authorization cards from 18 employ-

<sup>3</sup> There was no dispute that the issue of "willful negligence" was of great importance to Respondent. Where such a finding is made penalties are very substantial.

ees and received more thereafter. The signers of these cards represented a substantial portion of the bargaining unit. Thereafter White contacted the Union's business agent and the two men arranged for the business agent to meet with employees at a Barrow restaurant on June 21, 1991. White then told the employees of the upcoming meeting.

On or about June 14, 1991, White met with Sheldon Tieglund, Respondent's administrative manager, at White's home. White told Tieglund "what was going on" respecting his activities concerning the Union. Tieglund asked how many employees had signed authorization cards and White told him.

On June 17 or 18, 1991, White was working on a stairway in the front hallway of the utility plant with fellow employee Brett Eisenhour when they were approached by Caress in midmorning. White testified that he exchanged greetings with Caress and asked him what he could do for him. Caress responded that he wished to talk to White about "this unionizing." White asked Caress where he wanted to talk and Caress responded that "right here is good enough." At that point in White's recollection Eisenhour excused himself and White and Caress continued alone. White testified:

Mr. Caress asked me why this [unionizing] came about, why he hadn't been informed. And I explained to him that the employees had decided they didn't want him to be informed which they didn't. He asked me why they were wanting the Union to represent them. I explained to him there was several different reasons. Part of it was supervision. Part of it was communications with supervision and management people. I can't name all the reasons. There were several reasons that they had come up with on this. Part of it was some of their working conditions they didn't like. . . . The safety part of it came up several times from several different employees. . . . And that was the end of my conversation with Mr. Caress. He proceeded to tell me at that time, he said you have lost all my respect and credibility and proceeded to leave.

White further recalled that he also told Caress that he had earlier talked to Tieglund about the organizing efforts and that Caress responded that he had not known about that.

Brett Eisenhour, the chief operator of the utility plant until his termination in the fortnight before the hearing herein, testified that he was present during the conversation between White and Caress in mid-May 1991. He testified:

Jim [Caress] said the sneaky stuff going around the plant meaning the Union activity. And Harry [White] said yes, some of the guys wanted to know about the Union and all I'm doing is, you know, taking care of them, what they want to know about it out in the open. And Jim said that if they wanted any information on Union, he has it all in the office and they can come ask him.

And so at that point they just—the conversation went into, you know, he'd been working at a Union and Jim was—Harry was a member of a Union and Jim was also a member of the Union and that they each knew different sides of the Union and what not. And that's basically what the conversation was.

. . . .

[Caress] asked why it hadn't been, you know, the issue hadn't been brought to the office. And Harry thought it was something that management really shouldn't know about as far as if they're going to sign their cards or what not and vote. He thought that it was better that, you know, they go ahead and do it without management knowing because it was, you know, it was our rights, I guess.

Caress testified that "within a matter of hours" after he learned of the employees' union activities he went to the Base II plant and spoke to White in Eisenhour's presence. He testified:

Mr. White and I talked about the IBEW. Basically I wanted to know why these activities were going on and why he had not brought them to my attention. And Mr. White informed me that it's something that's supposed to be of a secretive nature, you know, it's not necessarily something that's brought to me. We talked about the union and I informed Mr. White that I also had been an apprentice, had gone all the way through the IBEW 1547, I was no stranger to it, I've negotiated on both sides for and against the union. You know, the subject of union is really open conversation at a company. We have union [linemen]. The office has got data that's available to anybody that wished it. And basically, the conversation ceased at about that point and I went back to the office.

Caress testified that he then returned to his office and prepared the following memorandum dated June 18, 1991, which was disseminated to employees on that date.

To: Base II Employees

The subject of a union, its cost and conditions, for employees has a data base at [Respondent] and is an open subject. The secretive manner in which Harry White as Plant Steward handled this subject has caused him a loss of creditability [sic], especially with me, as General Manager.

Please elect another person to replace Harry White who will act in all of our behalves [sic]. In the meantime, there is an IBEW steward [Dick] here at [Respondent], an agreement between [Respondent] and the IBEW that covers the linemen and typical known costs for dues, etc. There is more than enough data to compare [Respondent] benefits against IBEW benefits and costs.

Until such time as you have a new steward in place, contact me or Roger Jones if you desire union data, etc.

/s/ Jim Caress

White testified that Caress suggested several individuals for steward but that these employees declined to serve. White described the later events:

The employees sat down and wrote a memo back to Mr. Caress expressing their desire to have me left on as Steward or reelecting me as the Steward—what have you. They all signed it and it was given to Mr. Caress and Mr. Caress rejected it.

6. White's contact with the president of the board of directors and the consequences

On June 19, 1991, in the evening White had occasion to meet Respondent's board of director's president, Edith Vorderstrasse, in the grocery store. The two were casual acquaintances and spoke briefly. White described the conversation:

And she brought up the subject of the asbestos removal and if I had been informed from OSHA of what the charges were going to be and what the complaint was that was filed and the whole bit. I told her that I had not received anything. Didn't know when I'd receive anything. She said well if the proper papers are received from OSHA by the time we have our Board meeting, if it reflects negligence on the part of Barrow Utilities, that it was very possible that they would ask for the dismissal of Patrick Cleveland.

I told her I could not understand why he hadn't been reprimanded for what had happened. She said she could not understand it either. As far as I know, he had not been reprimanded in any way. He was not put on probation. He was not put on suspension. He still kept his job as a supervisor.

Vorderstrasse, although apparently available, was not called to testify.

The following day at the beginning of work, White and Cleveland had a conversation in the breakroom. White testified:

I was sitting in the break room putting on my coveralls and Mr. Cleveland came in and asked me how it was going and I says it's going just fine. I said it doesn't look too good for you. And he said what do you mean by that? I said well I had run into Edith Vorderstrasse in the local market the evening before. . . . I told him that she had told me that if they got all the paperwork and reports back from OSHA and they showed [Respondent] was negligent on the removal, that it was very possible that they would ask for his dismissal. And he said well, he said, we'll see about that. And I said, you know, it's not my problem.

But I also informed him that it was coming very close to the time for the operators to vote on whether he kept his job as supervisor or not. So there was two things that he had to look at. And he said well I'm not worried about that. He said that'll take care of itself.

Mr. Cleveland also described the conversation.

I was sitting in the coffee room of the utility plant. . . . And as I was sitting there having a cup of coffee and looking things over, Mr. White came into the coffee room and sat down across about a three foot table from me and leaned across the table kind of looking at me. . . . And as he spoke to me in a low tone, he said I just thought I'd let you know that Edith and I discussed this yesterday and tomorrow after the Board meeting will be your last day.

. . . .

He also mentioned at that time although I don't remember the words exactly he used as I do the threat that he intended to attend that Board meeting. And that at the Board meeting the matter of the shop Steward would be discussed. . . . And he did not think that management should be able to do that and he was going to discuss that at the Board meeting.

Cleveland specifically denied that White suggested that Cleveland's upcoming termination by the Board was conditioned on a determination by OSHA that Respondent had been negligent about asbestos or that there was any discussion of or use of the words "willful negligence" between them.

Following this conversation Cleveland completed his morning duties and went to Caress's office. Cleveland testified he told Caress "exactly what Harry had said to me and asked him basically if it was true." Caress told Cleveland, in Cleveland's recollection, that he did not know of any intention to fire him. Caress' memory of the conversation, while much less specific as to detail, was corroborative of Cleveland.

Caress testified that later that afternoon he requested that White come to his office. The two individuals met the following morning. White testified that Caress asked him if he had told Cleveland that he was going to be discharged and why he had talked to the president of the board of directors. White answered that Vorderstrasse had told him that there was a possibility that the Board would ask for Cleveland's dismissal. Caress asked if those were the exact words he had said to Cleveland and also asked why White had made the statement to Cleveland. White responded that those were the exact words he had used to Cleveland and that "all I was trying to do was to be truthful with Pat [Cleveland]." Caress then asked White to stay in the office while he called Cleveland to join them.

Caress recalled that the meeting began with his asking White to "repeat the statement that he had made to Pat Cleveland in regards to his employment." Caress testified he found White to be generally evasive in reporting what he had told Cleveland the day before and at that point asked Cleveland to join the meeting.

Cleveland joined White and Caress in Caress's office. White testified:

Pat [Cleveland] came to the office. [Caress] asked Pat to repeat. . . . to him what I had said. And Pat said that Edith and I had decided that he was going to be fired. And I at that time said no that's not the words that I said. Mr. Caress says well you verified this already and I said not those words. And he said well will you attest that you stated that he might be terminated? I said yes I will. I did. So I did say yes, but not to the words that Pat said.

Caress also recalled that he initially asked Cleveland to repeat what White had told him and that Cleveland "basically" said that White told him that White and the board president had elected to terminate Cleveland after or during the board meeting. Caress testified:

I turned to Harry White and asked him to confirm or deny the statement. he started to answer some other

question. I said, please confirm or deny it. At that point in time, Harry White said I made the statement. He confirmed that he made that statement.

Caress testified that the statement of White was unqualified and was a "direct admission that he had made a threatening statement to Pat Cleveland." He then issued a handwritten suspension to White to give himself "time to finish fully exploring this matter."

Cleveland recalled that he arrived at the meeting after the two others "had been talking a while." Caress asked him to repeat what he had told Caress the previous day and he did so. Caress then asked White if he had made those statements and White said: "Yes, he did say the first part of what I construed to be a threat of my position." Cleveland recalled that Caress then asked White about his stated intention to attend the Board meeting and White denied having made that statement to Cleveland. At this point Cleveland recalled Caress announced he was suspending White. Thereafter White left the facility.

Caress testified that after White's suspension he contacted Vorderstrasse and

asked her about this meeting that had taken place between her and Harry White over at the store, and what was the essence of it, the outcome of it, what transpired? And talking with her on that subject, and informed her of why I was contacting her and what statements were made.

Caress testified that Vorderstrasse told him

[t]hat she did not concur with or have any reason to address the termination of Pat Cleveland. That is not something the Board of Directors is involved in.

Following a period of days, White was discharged on June 27, 1991. As part of his loss of employment he was required to vacate Respondent's supplied housing. Respondent's discharge letter signed by Caress states in part:

My decision is based upon the attitude and verbal statement you made to the Base II Superintendent regarding his being terminated.

Respondent's prehearing brief, Judge's Exhibit 1, at 11, states:

On June 20, 1991 White told Pat Cleveland that he had met with the president of the Barrow Utilities Board of Directors, Ms. Vorderstrasse, and that it was determined that Cleveland would be terminated after the next Board of Directors meeting. Cleveland then reported this information to Caress. Caress met personally with White and Cleveland. White admitted to having made the forgoing statement to Cleveland. Caress thereupon immediately suspended White pending an investigation. After being advised by Ms. Vorderstrasse that she had neither impliedly or expressly authorized White to make the forgoing statement to Patrick Cleveland, Caress terminated White for insubordination and deceit.

There was no record testimony respecting conversations between Caress and Vorderstrasse.

#### 7. Business Representative Giuchici's contacts with Caress

John Giuchici, business representative of the Union, met with Caress on Tuesday, June 25, 1991. Caress indicated he was aware of the upcoming meeting with employees. Giuchici told Caress he had been contacted about representing the employees. Caress said the majority of employees did not want the Union, rather that just a few rabblers were behind it.

The two men met again the next day, June 26, 1991. Giuchici testified the two talked of the employee meeting the previous day, about the desires of employees and the Union's intention to file a representation petition. He testified:

And at that time Mr. Caress' voice raised quite a bit and he said if anyone doesn't like the way things are here now, they can pack their bags. And with the tone and everything, I says well okay, but I'm going to go ahead and I'm going to go back and I'm going to file. And he says well go right ahead. I'll tie it up in the courts for years.

Thereafter a representation petition was filed and an election held. The Union did not prevail.

#### D. Analysis and Conclusions

##### 1. The supervisory status of the chief utility plant mechanic position

Respondent contends that White as chief utility plant mechanic was a supervisor within the meaning of Section 2(11) of the Act. The General Counsel argues the contrary. Several issues were litigated.

Initially it should be noted that White's position as steward was not contended to support a finding of supervisory status and correctly so. The role of employee representative or assistant is not supervisory within the meaning of the Act. Further, I find the fact that Respondent appointed White as steward supports the General Counsel's position that White was not a supervisor. The steward role, as described in the memorandum to employees quoted supra, is clearly one of the employees' representative in employees' dealings with their "direct supervisor." Were White a supervisor, his role as the employees' assistant or at least as a neutral in their relations with management would be compromised. The fact of White's appointment and service thereafter as steward suggests neither Respondent nor the employees regarded him as a supervisor.

Respondent contends that the chief mechanic supervises and trains the mechanic and has the responsibility to responsibly direct him. Wolfe testified that the chief mechanic's responsibilities in this regard are clear. White testified however that as chief mechanic he received very specific instructions from Cleveland and was required to clear major decisions with him thus greatly reducing the discretion he possessed to initiate work involving the mechanic. Further White testified that his relationship as chief with the mechanic depended on their relative areas of expertise. Thus he suggested that when working in the electrical area the mechanic gave him work instructions and directions and when working in mechanical areas he gave the mechanic instructions and directions.

Respondent points out that White as well as Cleveland testified that White could “commandeer” utility plant operators to assist when needed and direct their work. Indeed that is a responsibility explicitly given to the mechanic in his job description. The ability to obtain staff assistance when necessary and the implied authority to direct those assistants in the specific work projects involved does not standing alone rise to the level of supervisory authority where there is no evidence of the frequency of the process or the type of work or supervision involved. Thus neither the chief nor the mechanic is a supervisor because of his right to command assistance when needed for particular tasks.

Wolfe also testified that the chief mechanic “would” have the authority to effectively recommend discipline of the mechanic. White specifically denied ever possessing or utilizing such authority. The chief mechanic’s job description is significantly lacking in all areas of direct supervisory powers. I credit White over Wolfe that such powers and authorities were never communicated to White or exercised by him. White had a far superior demeanor. Further Wolfe seemed to rely on general assertions of authority in the abstract which were not confirmed by White’s job description.

Further the other testimony did not sustain Respondent’s position. Thus, Cogburn, who worked as mechanic, testified he did not regard White as his supervisor. Cleveland testified about his promotion from chief mechanic to superintendent: “[W]hen a position came open as a supervisor in the same building where I had worked, I took that position.” Such testimony is hardly indicative of a promotion from a supervisory position. Given all the above, I find the chief mechanic’s relationship to the mechanic during White’s service in that capacity reflects the cooperative efforts of individuals with differing skills rather than the traditional supervisor-supervisee relationship.

The core powers to hire, fire, discipline, or effectively recommend such action are clearly lacking in the chief mechanic position. White’s role in the hire of his replacement was very limited and did not involve a true recommendation of that individual’s hire based on consideration of his skills or abilities but rather simply an assertion of opinion that an individual with electrical skills should be hired.

On the basis of all the above I find there is insufficient credible evidence for Respondent to meet its burden of proof of showing that White as chief mechanic was a supervisor within the meaning of Section 2(11) of the Act. Accordingly I find White was an employee covered by the Act and the protections of Section 7 thereof at all times material.

## 2. The allegations of independent violations of Section 8(a)(1) of the Act

Paragraph 7 of the complaint alleges three statements by Respondent’s manager Jim Caress as violative of Section 8(a)(1) of the Act. Two are treated separately below.<sup>4</sup>

<sup>4</sup>The third allegation, par. 7(a) of the complaint, was without supporting evidence to sustain it as an allegation separate from others. It shall be dismissed.

### a. Complaint paragraph 7(b): On June 17, 1991, Caress interrogates White concerning his union activities

The three versions of this conversation are set forth in some detail, *supra*, and do not vary significantly. Caress admittedly braced White with questions about the union activity of employees, his role in the union activities and expressed dissatisfaction with White’s “secretive” actions. White suggested he was assisting employees at their request and that he did not come to management respecting the matter because the employees wished to consider and take action on their own.

There is no dispute that employers may not interrogate employees about either their union activities or the union activities of others. White at the time Caress initiated the interrogation had not identified himself to Caress as a union supporter nor were the union activities of employees a matter of public discussion at the facility. Thus a classic violation of Section 8(a)(1) of the Act seem to be made out.

Respondent seeks to defend its conduct by suggesting that Caress was simply directing his questions and statements to White because of White’s obvious failures to bring employees’ grievances and concerns to management’s attention before they turned to a union. Respondent posits that White as steward should have come to Caress or other management representatives with employee problems before the problems ripened into union activities. Respondent argues that White was therefore derelict in his duty as steward. As discussed in greater detail, *infra*, I reject this defense in its entirety.

Assisting employees in obtaining information about a union and otherwise helping them seek union representation is protected activity which may not be the basis for adverse action nor a justification for interrogating an employee about those activities. The fact that the employee involved is a “steward” whose duties include bringing employee grievances to management is not a justification, mitigation or excuse. Employees, including stewards on their own initiative or in response to the requests of employees, have the statutory right to consider and initiate union activity secretly without bringing their or other employees’ union activities to management’s attention. The steward role thus may not be construed to in any way waive or diminish those fundamental statutory rights.<sup>5</sup>

Nor may an employer punish a steward for a failure to report the employee concerns which underlay their initiation of union activities or justify an interrogation based on an investigation of his conduct in this regard. Simply put, union activities are off limits to employers in this setting. Accordingly, I find Respondent’s actions in interrogating White about union activities at base II violated Section 8(a)(1) of the Act. Therefore I find the General Counsel has sustained this allegation of the complaint.

<sup>5</sup>The issue here is not simply a question of a clear and unmistakable waiver of rights. Any promise by a statutory employee to refrain from union activity or to report the union activities of others would be void by operation of law. The law has long been clear that all variations of the venerable “yellow dog contract” are invalid as a matter of law.



*b. Complaint paragraph 7(c): June 26, 1991 Caress threatens employees "to pack their bags" if they disapproved of existing working conditions*

During oral argument the General Counsel conceded this complaint allegation was supported only by evidence of the conversation between Union Business Representative Giuchici and Caress. Counsel when pressed acknowledged he had no case authority to support a finding of a violation where an employer's agent speaks to a business agent alone. The General Counsel asserted his theory of a violation was based on the assumption that the "business agent would have communicated the threat to the employees and the employees would have, therefore, been intimidated."

I find no case authority for the proposition that anything Caress may have said to a union business representative could by that action in isolation, independently violate Section 8(a)(1) of the Act. Nor may the doctrine of foreseeable repetition be invoked where the person who would be expected to repeat the statement is the business representative of the Union. Accordingly, I find no violation and I shall dismiss this allegation of the complaint.

*3. The June 18, 1991 removal of White as "plant steward"*

Paragraph 8(a) of the complaint alleges that on June 18, 1991, Respondent reported to its employees its displeasure with the union activities of White and in the same communication removed White as "steward." Paragraph 8(b) of the complaint alleges Respondent undertook the conduct alleged in paragraph 8(a) because White supported or assisted the Union and in order to discourage employees from engaging in union activities or other protected concerted activities.<sup>6</sup>

The memorandum of June 18, 1991, quoted supra, makes clear why White was removed as steward. The key sentence: "The secretive manner in which Harry White as plant steward handled [the subject of a union] has caused him a loss of credibility, especially with me, as General Manager." Clearly White was removed from the steward position because of his "secretive" union activities and the other employees' union activities.

Respondent argues that White had a duty as a steward to bring employee problems to management before they rose to a level which caused employees to consider unionization. Thus Respondent argues that the employees' union activities were simply an indication that White was a failure as steward and must be replaced. Further, the "secretive" actions of White respecting the employees' union activities indicated that he was unwilling to be the open intermediary bringing all problems to management's attention that Respondent felt was required in the steward position. Thus, in Caress' view such an individual lost all credibility.

As noted supra, I find Respondent's defense to be without merit. Respondent may not punish an employee—as opposed to a supervisor—for failing to bring employee union activities to management's attention or for assisting employees in organizational activity. This is so even if the employee is a steward in a system of the type put in place by Respondent.

<sup>6</sup>Complaint par. 8(b) also contended the conduct was undertaken to discourage employees from reporting unsafe working conditions to OSHA. There is insufficient evidence to sustain this portion of the allegation. It is therefore dismissed.

Thus, I find Respondent has violated Section 8(a)(1) and (3) of the Act in removing White as steward. Therefore, I find the General Counsel has sustained this allegation of the complaint.

Respondent's communication of its actions to employees by means of the quoted memorandum is alleged as a separate, independent violation of Section 8(a)(1) of the Act. The memorandum makes clear the impermissible reason for White's removal as steward and therefore constitutes a threat to employees that union activities may result in adverse actions against them. Accordingly, I find Respondent in communicating the memo to employees violated Section 8(a)(1) of the Act as alleged in the complaint.

*4. The June 21, 1991 suspension and June 27, 1991 discharge of White*

*a. Credibility resolutions*

The General Counsel argues that Caress seized on Cleveland's June 20, 1991 report of his conversation with White as a pretext to remove White because of his union activities.<sup>7</sup> Respondent argues to the contrary that Caress suspended and thereafter discharged White only for White's statement to Cleveland that he would be discharged. The testimony of events presents factual conflicts which require initial resolution.

Only White testified respecting his conversation with Vorderstrasse on the evening of June 19, 1991. Vorderstrasse is an agent of Respondent and was not called to testify respecting these events. I credit White's uncontradicted testimony.

Cleveland and White testified respecting their morning conversation on June 20, 1991. The testimony, characterized supra, differs in collateral detail and in a critical element. White asserts and Cleveland denies that White reported that Cleveland might be discharged, if Alaska OSHA found negligence on the part of Respondent respecting the asbestos events discussed supra. Cleveland testified that White told him that the board of directors, the president, and White had unconditionally determined to terminate him.

I find that White made his "discharge" remarks as he indicated and reject the contrary version of Cleveland. I do so in large measure on credibility and demeanor grounds because I was consistently taken with White's directness and apparent honesty on the stand. Cleveland was a less impressive witness in my view. Further, I believe that Cleveland was likely to have taken the statements of White about his possible discharge badly and focused on the perceived threat without hearing or at least recalling the conditions attached to it. Cleveland's testimony on the issue, quoted supra, supports this view. White, who I have found an honest witness supra, would be far less likely to have misrecalled his statements. Further, given my findings respecting the White-Vorderstrasse conversation and in agreement with the oral ar-

<sup>7</sup>The complaint also alleges Respondent took the actions against White because of employees protected concerted activity of contacting OSHA concerning the asbestos. While the asbestos events are a critical portion of the events herein, there was insufficient evidence to support any finding of independent animus turning on the OSHA process. Further, the General Counsel seemed to abandon this theory in his oral argument. Given all the above and on the record as a whole, I find the "OSHA" animus theory to be without merit.

gument of counsel for the Charging Party on the issue, I find White's version of the conversation much the more probable. White would have been unlikely to have made an unconditional threat of discharge to Cleveland. Such a bald unconditioned threat, if it did not come to fruition at the next board meeting, would render White foolish.

The initial conversation on June 21, 1991, between White and Caress and the following conversation, including Cleveland, also present credibility issues. Caress testified that White was evasive and nonresponsive initially but finally in effect admitted he had directly threatened to discharge Cleveland. White's version of events suggests that he accurately reported his conditional statements to Cleveland the previous day and was not so much quibbling with Caress as trying to accurately report events. In White's version of events Caress is uninterested in hearing White out and is rather determined to sustain Cleveland's version of events and find improper conduct by White.

I find that each individual was trying to give his best recollection of these events. I find further however that White did in fact try on several occasions to report the fact that he did not tell Cleveland that he was going to be fired but, rather, told him only that Vorderstrasse had told White that the Board might seek Cleveland's discharge if willfulness/negligence respecting the asbestos issue was found by OSHA.

#### b. A Wright Line analysis

The Board in *Wright Line*, 251 NLRB 1083 (1980), established an analytical approach to discipline cases such as the instant case. The Board looks initially to see if the General Counsel has established a prima facie case sufficient to support the inference that protected conduct was a motivating factor in Respondent's decision to suspend and thereafter discharge White.

Here the close timing of White's removal as steward and Caress's announcement that White had lost all credibility with him—actions found directed against White and other employees' union activities and violative of the Act, supra, and White's suspension is highly persuasive. It is very probable that Caress, whose attitude toward White had clearly taken a strong turn for the worse and who had only two days before announced to employees that he no longer believed in White, simply rejected all that White had said respecting the disputed events and seized on Cleveland's report to take adverse action against White. My credibility resolutions support this finding.

After the suspension but before the discharge Caress had his conversations with the union business representative, whose version of the conversations is credited. Caress in those conversations reveals a hostility to employee selection of a labor organization to represent them. Further in this period, Caress was informed the employees had not accepted his removal of White as steward and had further refused to choose a replacement for him.

All of the above coupled with White's excellent work record and Cleveland's probationary status at the time of the events in issue, convince me the General Counsel's prima facie case is strongly made.

Once the General Counsel's prima facie case is established under a *Wright Line* analysis, the burden of proof shifts to Respondent to show that the adverse actions would have

been taken even in the absence of the protected conduct. Here Respondent must show that the suspension and discharge of White would have occurred even if the union activities underlying White's removal as steward had never occurred.

On this record I find Respondent has failed to carry its burden. Thus it is not at all evident to me that, absent the "loss of credibility" White suffered in Caress's eyes, (1) Whites' version of his conversation with Cleveland would have been rejected by Caress, (2) White would have been suspended in the manner he was, or, finally, (3) White would have been discharged rather than received lesser discipline. I reach this conclusion based on my credibility resolutions and findings above. I am buttressed in this conclusion by the absence of any testimony from Vorderstrasse or Caress respecting Vorderstrasse's actions and/or statements to Caress<sup>8</sup> and on the absence of any evidence of past discipline by Respondent of an arguable similar nature or in similar circumstances.

Given all the above, I find the General Counsel has sustained his allegation that White was suspended and thereafter discharged because of his union activities in violation of Section 8(a)(1) and (3) of the Act.<sup>9</sup> Accordingly I shall sustain these allegations of the complaint.

#### 5. Summary and conclusions

Summarizing my findings above, I have found without merit and will dismiss complaint paragraphs 7(a) and (c) as lacking in evidence. I have found Respondent's agent Caress interrogated White about his and other employees' union activities in violation of Section 8(a)(1) of the Act sustaining paragraph 7(b) of the complaint.

I have sustained paragraph 8 of the complaint finding that Respondent removed White from his steward position because of his and other employees' union activities in violation of Section 8(a)(1) and (3) of the Act and violated Section 8(a)(1) of the Act in informing employees that it has done so.

Finally I have found that Respondent suspended and thereafter discharged White because of his union activities and the union activities of other employees in violation of Section 8(a)(1) and (3) of the Act sustaining paragraph 9 of the complaint.

#### REMEDY

Having found Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and

<sup>8</sup>I specifically find that Vorderstrasse, at all material times the president of the board of directors, is an agent of Respondent for purposes of the circumstances herein. Thus I find that an inference is permissible, which I draw, that, had she testified, her testimony would not have been inconsistent with White's testimony and that it would not otherwise have been favorable to Respondent's theory of the case.

<sup>9</sup>While White might have been disciplined for the Cleveland-Vorderstrasse events, rather than discharged, had he not been engaged in union activities, the type of discipline that might have been administered is not clear. In such circumstances, an improper discharge is not reduced to some lesser discipline but, rather, the discharge is entirely set aside. *Bakersfield Memorial Hospital*, 305 NLRB 741 (1991).

desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

I shall direct Respondent to offer Harry White full and immediate reinstatement to his former positions of steward and chief utility plant mechanic. Further Respondent shall be directed to make White whole for any and all loss of earnings and other rights, benefits and emoluments of employment, including company supplied housing, he may have suffered by reason of Respondent's discrimination against him, with interest. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987); See also *Florida Steel Corp.*, 231 NLRB 651 (1977), and *Isis Plumbing Co.*, 138 NLRB 716 (1962).

Respondent shall also be required to withdraw, rescind and remove all references to White's loss of stewardship, suspension, and discharge and notify White in writing that this has been done and that his removal as steward, his suspension and his discharge will not be the basis of any adverse action against him in the future. *Sterling Sugars*, 261 NLRB 472 (1982). Finally Respondent will be required to preserve and, upon request, make available to the Board or its agents for examinations and copying, all company records necessary to analyze the amount of backpay due under the terms of this decision and to otherwise assure that the Order herein has been fully complied with.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by engaging in the following acts and conduct:

(a) Interrogating an employee concerning his and other employees' union activities.

(b) Informing employees that employee Harry White was being removed as steward and had lost all credibility with management as a consequence of his "secretive" union activities.

4. Respondent violated Section 8(a)(1) and (3) of the Act by removing employee Harry White from his position as steward on June 18, 1991, suspending him on June 21, 1991, and discharging him on June 27, 1991, in each case because of his "secretive" union activities and the union activities of other employees.

5. Respondent did not otherwise violate the Act as alleged in the complaint.

6. The unfair labor practices found above are unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>10</sup>

<sup>10</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

#### ORDER

The Respondent, Barrow Utilities and Electric Cooperative, Incorporated, Barrow, Alaska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union activities and the union activities of others.

(b) Informing employees that their employee steward had been removed and had lost all credibility with management because of his "secretive" union activities and the union activities of other employees.

(c) Suspending and removing Chief Utility Plant Mechanic Harry White from his position as steward because of his "secretive" union activities and the union activities of other employees.

(d) Suspending employee Harry White because of his "secretive" union activities and the union activities of other employees.

(e) Discharging employee Harry White because of his "secretive" union activities and the union activities of other employees.

(f) In any like or related manner violating the provisions of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer immediate and full reinstatement to Harry White as chief utility plant mechanic and as steward, replacing as necessary any individuals hired or appointed to replace him.

(b) Make whole White for any and all losses incurred as a result of Respondent's suspension and discharge of him, with interest, as provided for in the remedy section of this decision.

(c) Withdraw, rescind and remove from its files any and all references to White's removal as steward, to his suspension and to his discharge and notify White in writing that this has been done and that these improper actions will not be used against him in any future personnel actions.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Barrow, Alaska facilities copies of the attached notice marked "Appendix."<sup>11</sup> Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>11</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."